



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE YUQUILEMA, *et al.*,

Plaintiffs,

-against-

MANHATTAN'S HERO CORP., *et al.*,

Defendants.
-----X

13cv461

ORDER

WILLIAM H. PAULEY III, District Judge:

Plaintiffs filed this action under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL) in January 2013. Defendants Jack Mordechai and Stefano Troia answered the complaint, but three other Defendants did not. In June 2013, this Court entered a default judgment as to liability against Defendants 350 Fifth Avenue Corp., William Fernandez, and Manhattan's Hero Corp., but deferred assessing damages pending the resolution of the claims against Mordechai and Troia. (ECF No. 25.) In December 2013, Plaintiffs and the appearing Defendants consented to the jurisdiction of Magistrate Judge Cott for all purposes and then settled their claims. Plaintiffs then submitted papers in support of the damages to be awarded against the defaulting Defendants. On September 26, 2014, Magistrate Judge Cott issued a report & recommendation. Magistrate Judge Cott noted factual inconsistencies among the complaint and the affidavits and submissions in support of a damages award. Most stark were inconsistencies concerning Jose Yuquilema, who alleged he worked 84 hours per week but who submitted a sworn declaration stating he worked 25 hours per week. Magistrate Judge Cott directed counsel to clarify Yuquilema's damages claims, but they did not do so. He therefore

recommended no damages be awarded to Yuquilema, but he recommended that judgments be entered in favor of the remaining defendants in a total amount of \$396,992.64 in damages, plus \$8,810 in attorney's fees, and \$430 in costs. (ECF No. 53).

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations" of a magistrate judge. 28 U.S.C. § 636(b)(1). This Court reviews those parts of the Report to which objections are made de novo and reviews the remainder for clear error on the face of the record. 28 U.S.C. § 636(b)(1); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The report & recommendation informed the parties they were required to file any objections within 14 days. None have been filed. Having reviewed Magistrate Judge Cott's thorough and well-reasoned report, this Court adopts its reasoning and conclusions.

CONCLUSION

Default judgment is entered against Defendants 350 Fifth Avenue Corp., William Fernandez, and Manhattan's Hero Corp. in the amount of \$396,992.64, plus prejudgment interest as described in the report & recommendation at pages 25 to 27, consisting of (1) \$90,864 in compensatory damages, \$2,500 in statutory damages for failure to receive a wage statement, \$34,920 in FLSA liquidated damages, and \$35,298 in NYLL liquidated damages for Plaintiff Jose Orea; (2) \$33,160.46 in compensatory damages, \$2,500 in statutory damages, \$23,094.48 in FLSA liquidated damages, and \$16,978.38 in NYLL liquidated damages for Plaintiff Pablo Velendez; (3) \$73,899.75 in compensatory damages, \$2,500 in statutory damages, \$45,666 in FLSA liquidated damages, and \$35,611.57 in NYLL liquidated damages for Plaintiff Mario Carrasco. Plaintiffs are further awarded \$8,810 in attorney's fees and \$430 in costs. The Clerk of Court is directed to enter judgment in these amounts, terminate all pending motions, and mark this case closed. Because no objections were filed to the report & recommendation, no appeal may be taken from this order. See Wagner & Wagner LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

Dated: September 30, 2014
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Copies to:

Magistrate Judge Cott

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